



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/587,992	06/09/2008	Charles H. Yanke	093144-9030	1399
23409 7590 06/09/2009 MICHAEL BEST & FRIEDRICH LLP 100 E WISCONSIN AVENUE Suite 3300 MILWAUKEE, WI 53202				
EXAMINER MASKELL, MICHAEL P				
ART UNIT 2881		PAPER NUMBER		
MAIL DATE 06/09/2009		DELIVERY MODE PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/587,992

## Applicant(s)

YANKE ET AL.

## Examiner

MICHAEL MASKELL

## Art Unit

2881

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 4-7, 21, 32-35, 39, 41 and 43-58 is/are pending in the application.
- 4a) Of the above claim(s) 4-7, 21, 32-35 and 43-58 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 39 and 41 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_.

#### **DETAILED ACTION**

1. Newly submitted claims 43-58 and claims 4-7, 21 and 32-35 that have been amended to depend from said newly submitted claims are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: None of the originally presented apparatus claims (now cancelled) claimed the spherical structure or the first and second frame rings positioned at opposite ends of the vessel as present in the newly presented independent claims. These limitations substantially define the overall shape and configuration of the apparatus in a way not previously claimed. Further, the applicant's reply filed with the amendment on 05/12/2009 did not address the original grounds of rejection for the now cancelled apparatus claims other than to state that the rejections are moot due to the cancellation, and did not address the substance of these rejections as potentially applicable to the newly presented claims; thus the applicant has effectively asserted and admitted that the newly presented claims are patentably distinct from the originally presented claims.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 43-58 and claims 4-7, 21 and 32-35 are withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

#### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 39 and 41 rejected under 35 U.S.C. 103(a) as being unpatentable over Olsson (U.S. Patent Application Publication 2009/0126555 A1) in view of Rogers (U.S. Patent 3,820,435, already of record).

**Regarding claim 39**, Olsson discloses a method for using a device containment vessel to reduce exposure to radioactive material, the method comprising:

providing a device containment vessel including an outer wall (5) defining an interior area;

positioning a shield (7) adjacent the outer wall of the vessel, the shield being formed of a radiation shielding material;

placing an explosive device (11) containing radioactive material in the interior area of the device containment vessel wherein the shield minimizes dispersal of radiation from the explosive device; and

detonating the explosive device within the device containment vessel wherein the shield continues to minimize dispersal of radiation from the explosive device subsequent the explosion (paragraph 0023).

Olsson does not teach an opening through the outer wall for accessing the interior area, and a door providing access to the interior area of the vessel.

Rogers teaches an explosive device containment vessel for use with radioactive explosive materials comprising an opening through the outer wall for accessing the interior area, and a door providing access to the interior area of the vessel (Fig. 6).

Common sense would direct one of ordinary skill in the art to provide an opening and door such as that found in Rogers to the device containment vessel of Olsson because it provides a quick and easy means of inserting the explosive device into the containment vessel. It would have been obvious to one of ordinary skill in the art, especially when faced with a time-sensitive explosives situation, to provide Rogers' opening and door to Olsson's device containment vessel in order to quickly insert explosives into the protected interior area.

**Regarding claim 41**, Olsson discloses wherein positioning the shield comprises positioning the shield adjacent an exterior surface of the outer wall wherein the shield surrounds a portion of the vessel (Figs. 4 and 7).

#### ***Conclusion***

4. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL MASKELL whose telephone number is (571)270-3210. The examiner can normally be reached on Monday-Friday 8AM-5PM EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Kim can be reached on 571/272-2293. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael Maskell/  
Examiner, Art Unit 2881  
05 June 2009

Application/Control Number: 10/587,992

Page 6

Art Unit: 2881

/ROBERT KIM/

Supervisory Patent Examiner, Art Unit 2881